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2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
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5 In the Matter

6 of Case No.
7 RCN Corporation 04-13638

8 Debtor.

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10 September 8, 2004
11 United States Custom House
12 One Bowling Green
13 New York, New York 10004

14 Motion to Authorize/Motion of Official
15 Committee of Unsecured Creditors for entry of
16 order, under 11 U.S.C. Sections 105(a),
17 establishing certain notice procedures
18 regarding the operation of debtors' business
19 filed by Deirdre Ann Sullivan on behalf of
20 Official Committee of Unsecured Creditors with
21 hearing to be held on 7/30/2004 at 10:00 am at
22 Courtroom 610 (RDD) responses due by 7/21/2004;
23 Motion to extend time to file a motion for
24 non-dichargeability and to extend deadline to
25 file adversarial complaint, motion for relief
from stay filed by Jon w. Green on behalf of
Marie DeWeeks. Filing fee collected, receipt
#151025. (Attachments: #(1) letter), Third
notice of adjournment of hearing with respect
to motion of Official Committee of Unsecured
Creditors for Entry of Order, under 11 U.S.C.
Sections 105(a), establishing certain notice
procedures regarding the operation of debtors'
business filed by Deirdre Ann Sullivan on
behalf of Official Committee of Unsecured
Creditors with hearing to be held on 9/8/2004
at 10:00 am at Courtroom 610(RDD); Motion to
authorize RCN Corporation's motion for order

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authorizing the retention of PDA Group, LLC to perform consulting services for RCN Corporation filed by Jay M. Goffman on behalf of RCN Corporation with hearing to be held on 9/8/2004 at 10:00 am at Courtroom 610(RDD) responses due by 9/3/2004, (Attachments: #(1) Exhibit A#(2) Notice# (3) [proposed] Order).

B E F O R E:

HON. ROBERT D. DRAIN,
Bankruptcy Judge.

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A P P E A R A N C E S :

SKADDEN, ARPS, SLATE, MEAGHER & FLOM,
LLP

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BY: D.J. BAKER, ESQ.

-and-

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Bank, as agent
425 Lexington Avenue
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BY: ELISHA D. GRAFF, ESQ.

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A P P E A R A N C E S :

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BY: DEIRDRE ANN SULLIVAN, ESQ.

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P R O C E E D I N G S

THE COURT: RCN Corporation. D.J. Baker, Frederick Morris from Skadden on behalf of the debtors. I should begin, your Honor, by noting that I think special accolades should be paid this morning to my colleague, Mr. Morris, who hitched a ride on a flatbed truck in Hoboken to escape the rising water and hiked his way to the courthouse.

So we are very glad that he was able to be here, notwithstanding his unorthodox transportation.

THE COURT: That's good.

MR. MORRIS: Whatever it takes, your Honor.

MR. BAKER: Your Honor, we have several matters that were set that have been continued. The first of these was a hearing on a motion filed by the Creditors Committee with respect to the nonfiling subsidiaries of the debtors by agreement of the parties. That matter has been continued to September 29th.

Likewise, originally scheduled for

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2 today was a motion for relief from stay and a
3 bridge order to extend the time for filing a
4 nondischargeability motion filed on behalf of
5 Miss Duweeks. That also has been extended by
6 agreement of the parties to September 29th.

7 The matters set to go forward
8 today --

9 THE COURT: That's the disclosure
10 end date; isn't it?

11 MR. BAKER: Yes, your Honor. The
12 first matter that will go forward deals with
13 the proposed retention of Spencer Stewart, your
14 Honor, the search firm.

15 As your Honor may be aware, the
16 current CEO of the debtors, Mr. McCourt, has
17 announced his intention to step down but,
18 obviously, does not want to do that unless and
19 until a successor has been chosen.

20 As detailed in the application,
21 Spencer Stewart is probably the preeminent CEO
22 search firm in the country. Frankly, we are
23 not completely sure that this requires court
24 approval, but I think our view was when you are
25 talking about selecting a new CEO, it's

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2 probably something that should be brought to
3 the attention of the court and so we did it.

4 The terms of the retention are
5 fairly standard. It's basically one-third of
6 the estimated first year's compensation of
7 whoever the member of the CEO is, which is
8 estimated to be approximately in total
9 500,000. So the proposed comp to Spencer
10 Stewart is \$150,000 plus expenses.

11 There were no objections filed and I
12 believe all of the major parties in the case
13 support this.

14 THE COURT: Okay. Based on that and
15 my review of the motion, I will approve it.

16 MR. BAKER: Thank you, your Honor.
17 Judge, the next matter deals with the proposed
18 retention of the PDA Group to provide technical
19 and operational consulting services to the
20 debtors.

21 Frankly, again, we thought that all
22 this was arguably ordinary course. The
23 background leading up to it and the background
24 of Mr. Aquino, the principal of PDA suggested
25 that we should seek court approval.

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2 As the Court may recall, the
3 Creditors Committee has been employed to
4 provide technical consulting services to it, an
5 organization called Capital and Technology
6 Advisors, or CTA.

7 Mr. Aquino was previously employed
8 by CTA, and it was in that capacity that the
9 debtors met him and made his appointments.
10 Obviously, they had been impressed with him and
11 his ability to contribute to the operations of
12 the company; and so the proposal is that the
13 debtors employ him directly as a technical
14 consultant initially for a term of six months
15 at \$45,000 per month and then continuing month
16 to month thereafter.

17 I think the parties hope and expect
18 that assuming we exit Chapter 11 at the end of
19 this year, as everyone believes we will do, and
20 assuming that Mr. Aquino continues to perform
21 as exceptionally as the parties believe he
22 will, I think there is a hope and expectations
23 that at that point he will move into an actual
24 management position on the operations side of
25 the debtors.

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2 Now, we had a lot of discussions
3 both with the committee and the banks about
4 this. I won't presume to speak for the banks,
5 who are represented by counsel here this
6 morning, but in order to allay issues or
7 concerns that they raise, we entered into a
8 variety of agreements with them that we would
9 like to put on the record this morning so that
10 all of the parties are aware of them,
11 particularly your Honor.

12 THE COURT: Okay.

13 MR. BAKER: Specifically, and Mr.
14 Graff can correct me if I don't get it right,
15 the banks concern was that having a former
16 advisor to the Creditors Committee become an
17 actual employee of the debtors, even if only in
18 a technical or operational capacity, would, in
19 effect, place the Creditors Committee
20 potentially in a position of inappropriate
21 influence.

22 I think their concerns were slaked
23 by the fact that Mr. Aquino is going to be on
24 the technical side as opposed to the
25 restructuring side, but the banks specifically

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2 asked for the debtors to make a commitment to
3 them that given the fact that there are
4 comfortable with Mr. Dubel as the chief
5 restructuring officer and Alix Partners as
6 being retained, that as long as they were
7 retained, they would have no objection to their
8 retention of PDA and if for any reason they
9 were to not be retained, their successors or
10 replacements would have to be acceptable to the
11 banks.

12 And we were happy to agree with that
13 since, as far as we know, Mr. Dubel and Alix
14 Partners will continue to be engaged in this
15 matter until we make it across the finish
16 line. So that agreement I believe I'm correct
17 in saying that neither the bank or the
18 committee has any objection to this.

19 THE COURT: Okay. Hearing no one
20 popping up and saying otherwise, I accept
21 that.

22 MS. SULLIVAN: Your Honor, I would
23 like to add a few points to that. I don't know
24 if Mr. Graff was going to speak. I believe he
25 was.

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THE COURT: Okay.

MR. GRAFF: Good morning, your Honor. Elisha Graff, Simpson, Thacher and Bartlett, LLP on behalf of J.P. Morgan Chase as agent for certain prepetition secured lenders.

Mr. Baker's representations of the bank's agreement with the debtors is accurate.

I just wanted to point out that ordinarily the agent would be inclined to oppose a motion whereby the debtors would seek to retain an employee such as Mr. Aquino's senior position as described in the motion papers, specifically where he appears to be a designee of the Creditors Committee prior to the creditors committee actually taking control and ownership of the corporation upon the bank being paid in full.

However, given the agreement that was put on the record by Mr. Baker and also the debtor's representations that debtor's reorganization process remains smooth and the debtors expect and hope to emerge from Chapter 11 in the near future and hope to have the ability to pay the banks off in the future,

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2 with that representation with the debtor and
3 the agreement put on the record by Mr. Baker,
4 the banks consent to the relieve sought in the
5 motion.

6 THE COURT: Okay.

7 MS. SULLIVAN: Deirdre Sullivan,
8 Milbank Tweed on behalf of the Official
9 Committee of Unsecured Creditors. Your Honor,
10 we obviously do support the retention of the
11 PDA Group. We were not a party to the
12 discussions between the bank and the company
13 regarding the consent right as it were with
14 respect to the retention of J. Alix and Mr.
15 Dubel as CRO.

16 We have subsequently had some
17 discussions with counsel for the bank and the
18 company about this agreement between the two of
19 them. Obviously, we don't believe that there
20 is any intention at the current time to replace
21 J. Alix or John Dubel with the company, but we
22 do want to make it clear that our understanding
23 of this agreement is that it only relates to
24 future consent over any replacement of a CRO
25 and of J. Alix and the restructuring

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2 responsibilities and does not in any way affect
3 the retention of PDA under this motion and
4 under these circumstances that that has been
5 agreed to.

6 I should point out that we do expect
7 that, although Mr. Aquino's work is not
8 intended to be on a restructuring side, that
9 there may be some overlap of review of the
10 company's contract agreements, operations that
11 may appear to be related to the restructuring
12 but are actually intended to be work that has
13 consequences post-restructuring in terms of
14 post-restructuring operations and that the
15 banks -- we have had discussions with the bank,
16 that that's our understanding of what will
17 occur. They agree that that is what will occur
18 and that they are not objecting to that scope
19 of the work in that respect.

20 THE COURT: Okay.

21 MS. SULLIVAN: And that was all,
22 your Honor.

23 THE COURT: All right.

24 MR. BAKER: Your Honor, just one
25 final comment on this in order to be completely

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2 clear. If your Honor approves this retention,
3 PDA is not going to work for the Creditors
4 Committee. PDA is going to work for the
5 debtors. Its duties will run to the debtors
6 and to no one else and, to the extent they
7 don't, then our recommendation as counsel would
8 be to terminate the retention of PDA.

9 THE COURT: Right. And I think
10 that's consistent with the limitations on the
11 indemnity that they have and also the
12 information sharing, the information locking
13 provision, if you will, in the agreement.

14 And, also, I think that's basically
15 after the period where I think you're getting
16 up to where everyone is anticipating to be,
17 confirmation, that month to month nature of the
18 retention.

19 MR. BAKER: Exactly.

20 THE COURT: So that's how I take it
21 and I think it was a good idea to bring it in
22 front of the parties in the court given all the
23 background to it, but based on all that's been
24 said and the papers and my review of the
25 agreement, I will approve it.

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MR. BAKER: Thank you, your Honor.
And, your Honor, the final matter will be
presented by the Committee.

MS. SULLIVAN: Deirdre Sullivan from
Milbank, Tweed on behalf of the Committee. We
have a motion for your Honor for permission to
intervene in the matter that the debtors filed
with respect to the City of Chicago.

I've had conversation with both the
debtors and the City of Chicago. No objection
was filed. They also had an opportunity to
review the form of order that was filed with
the Court and had no additional comments to
that order. With that, we request that the
motion to intervene be requested, your Honor.

THE COURT: So you would be
intervening as a full party then, the
adversary?

MS. SULLIVAN: Yes.

THE COURT: Well, based on there
being no objections and I'm sure it was
carefully reviewed -- well, let me hear from
Mr. Baker.

MR. BAKER: Your Honor, the debtors

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2 have no objections to the proposed intervention
3 but, again, just in the interest of being
4 completely clear, the debtors, while they would
5 intend in pursuing this litigation to consult
6 with the Committee, since I think basically the
7 debtors interest and the Committee interests
8 are completely aligned, at the end of the date,
9 debtors will take whatever steps they deem
10 appropriate hopefully with the support of the
11 Committee, and if not, then it will be a matter
12 for your Honor to determine.

13 THE COURT: Okay. Actually, that's
14 where I was going. My understanding of this
15 particular cause of action is one that, to the
16 extent it is an affirmative cause of action,
17 belongs to the debtor and extends more likely
18 to a declaratory type of action also belonging
19 to the debtor. So I took the Committee's
20 motion to be one that was on a protective basis
21 to make sure the Committee was involved in the
22 proceeding.

23 If there is going to be some
24 settlement of it, I guess I look to the debtor
25 in the first instance to put that settlement

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2 before the court at that time and be on notice
3 to all the parties, but I have no problem with
4 Committee actively participating in the order.

5 MS. SULLIVAN: I have an order.

6 THE COURT: I'm not saying it should
7 be so but I'm just making it clear on the
8 record.

9 MS. SULLIVAN: Yes, your Honor, and,
10 hopefully, it will be with the Committee's
11 consent as well.

12 THE COURT: Anything else?

13 MR. BAKER: Nothing from the debtor,
14 your Honor.

15 THE COURT: Okay. Very well.
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C E R T I F I C A T E

I, MICHAEL WILLIAMS, a Certified
Shorthand Reporter and Notary Public of the
State of New York do hereby certify that the
foregoing is a true and accurate transcript of
the within proceedings, to the best of my
ability.

MICHAEL WILLIAMS, CSR